IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

Crl.Rev.Pet.No. 1812 of 2006()

CA.731/2003 of ADDL.SESSIONS COURT, KOZHIKODE
CC.3/1999 of JUDL. MAGISTRATE OF FIRST CLASS-III, KOZHIKODE

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REVN. PETITIONER: APPELLANT/ACCUSED

R.GOPALAKRISHNAN, V.R.C TRADING CORPORATION, ANNIE HALL ROAD, KOZHIKODE-2,
(BY ADV. SRI.N.BHASKARAN NAIR).

BY ADV. SRI.JACOB ABRAHAM

RESPONDENTS:

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1. K.SURESH BABU, (POWER OF ATTORNEY HOLDER) REPRESENTING SREE GOKULAM CHITS & FINANCE CO.(P) LTD., PLAZA BUILDING, MAVOOR ROAD, KOZHIKODE.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.M. NAZAR
SRI.K.S.BABU
SMT.N.SUDHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON 15-11-2007 PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 1812 of 2006

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Dated:

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No. 3 of 1999 on the file of the J.F.C.M.-III, Kozhikode challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard Adv. Sri. N Bhaskaran, the learned counsel appearing for the revision petitioner, Adv. Smt. Sudha , the learned counsel appearing for the first respondent/complainant and the learned Public Prosecutor.

3. On behalf of the complainant, the following submissions were made in support of the judgments under revision:-

The courts below have concurrently held that Ext.P3 cheque dated 31-07-1996 for Rs. 3,50,000/- was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, it was dishonoured for the reasons which squarely fall under Sec. 138 of the Act, that the complainant made a demand for payment by Ext.P2 notice given in accordance with clause (b) of the proviso to Section 138 of the Act and that the revision petitioner/accused failed to make the payment within 15 days of the receipt of

statutory notice. The courts below have rejected the plea of the revision petitioner that Ext.P2 notice does not conform to Sec. 138 of the Act. Ext.P2 notice clearly mentions the cheque amount and also claims interest thereon. But the additional claim of interest is severable from the cheque amount. Therefore, the notice is perfectly valid. ***(Vide Suman Sethi v. Ajay K. Churiwal and another - AIR 2000 SC 828).*** The notice issued was a consolidated notice. In ***Alavi Haji v. Muhammed - 2007 (3) KLT 77 (SC)*** the Apex Court has gone to the extent of saying that payment under the cheque can be made even within two months of entering appearance. In **Bankat Agarwal v. State of Madhya Pradesh - 2006 (3) KLT SN Page 24** (Case No. 38) the Madhya Pradesh High Court has taken the view that notice issued claiming the balance amount after deducting the amount paid in partial discharge of the cheque amount was held tobe valid. Ext.P6 notice satisfies the intention of the legislature. Reliance placed on the decision of the Apex Court reported in ***Indira v. Adinarayana - 2003 (3) KLT 1042 (SC)***by the accused is misplaced since in that case the notice was a common notice in which the cheque amounts were consolidated. In ***Ramnarayan v. Prop. Daulat Enterprises & Anr. - 2006 (1) Crimes 275*** the Bombay High Court has held that an amount higher or lower than the cheque amount can be claimed in the statutory notice. Similarly in ***Revathi v. Asha Bagree - 1992 (1) KLT 272*** the Madras High Court has held that a notice issued for a larger amount is valid.

In the light of the above judicial pronouncement the conclusions reached concurrently by the courts below do not warrant interference by this Court.

4. I am afraid that I cannot agree with the above submissions. Even according to the first respondent/complainant there were two loans. One availed of by the son of the revision petitioner/accused for a sum of Rs. 2,50,000/- and the other availed of by the revision petitioner/accused for a sum of Rs. 1,50,000/-. The total amount so borrowed by the father and son was Rs. 4,00,000/-. Ext.P6 statutory notice refers to both the above loans and states that on verification of accounts the son was found owing to the complainant a sum of Rs. 3,15,635/- and the father was found owing Rs. 40645/- thus making a total of Rs. 3,56,280/-. This amount of Rs. 3,56,280/- was the amount stated in Ext.P6 notice has found due as per accounts. The relevant portion in Ext.P6 reads as follows:-

The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138

of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed on the revision petitioner is set aside and instead he is sentenced to undergo imprisonment till rising of court and to pay a fine of Rs. ..... which shall be deposited before the trial court within five months from today failing which he shall suffer simple imprisonment for three months. The fine amount as and deposited shall be paid to the first respondent complainant as compensation under Sec. 357 (1) Cr.P.C.

This Revision is disposed of confirming the conviction but

modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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